

JAN 20 2012

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# A BILL FOR AN ACT

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RELATING TO ATTORNEYS' FEES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 607-14, Hawaii Revised Statutes, is amended to read as follows:

"§607-14 Attorneys' fees in actions in the nature of assumpsit, etc. In all the courts, in all actions in the nature of assumpsit and in all actions on a promissory note or other contract in writing that provides for an attorney's fee, there shall be taxed as attorneys' fees, to be paid by the losing party and to be included in the sum for which execution may issue, a fee that the court determines to be reasonable; provided that ~~[the]~~":

(1) The recovery of attorneys' fees shall be limited to attorneys' fees incurred in asserting or defending claims relating to the breach or non-performance of a contract, either express or implied, written or verbal, as well as quasi contractual obligations, or in an action where there is a mix of contract and non-contract claims, and the attorneys' fees incurred



1           cannot be reasonably apportioned between the contract  
2           and non-contract claims;

3       (2)   The classification by the complainant, cross-  
4           complainant, or counterclaimant of any claim in the  
5           pleading as being in tort or in the nature of  
6           assumpsit shall be binding upon the court, unless the  
7           party alleging that any specific claim is in the  
8           nature of assumption has first provided the party  
9           asserting the claims with twenty-one days' prior  
10          notice that unless the claims are withdrawn or  
11          appropriately corrected, the action shall be deemed in  
12          the nature of assumpsit and the party asserting the  
13          claims shall be subject to a motion for fees and  
14          costs; and

15       (3)   The attorney representing the prevailing party shall  
16           submit to the court an affidavit stating the amount of  
17           time the attorney spent on the action and the amount  
18           of time the attorney is likely to spend to obtain a  
19           final written judgment, or, if the fee is not based on  
20           an hourly rate, the amount of the agreed upon fee.

21           The court shall then tax attorneys' fees, which the court  
22           determines to be reasonable, to be paid by the losing party;



1 provided that this amount shall not exceed twenty-five per cent  
2 of the judgment.

3 Where the note or other contract in writing provides for a  
4 fee of twenty-five per cent or more, or provides for a  
5 reasonable attorney's fee, not more than twenty-five per cent  
6 shall be allowed.

7 Where the note or other contract in writing provides for a  
8 rate less than twenty-five per cent, not more than the specified  
9 rate shall be allowed.

10 Where the note or other contract in writing provides for  
11 the recovery of attorneys' fees incurred in connection with a  
12 prior debt, those attorneys' fees shall not be allowed in the  
13 immediate action unless there was a writing authorizing those  
14 attorneys' fees before the prior debt was incurred. "Prior  
15 debt" for the purposes of this section is the principal amount  
16 of a debt not included in the immediate action.

17 The above fees provided for by this section shall be  
18 assessed on the amount of the judgment exclusive of costs and  
19 all attorneys' fees obtained by the plaintiff, and upon the  
20 amount sued for if the defendant obtains judgment.

21 Nothing in this section shall limit the recovery of  
22 reasonable attorneys' fees and costs by a planned community



1 association and its members in actions for the collection of  
2 delinquent assessments, the foreclosure of any lien, or the  
3 enforcement of any provision of the association's governing  
4 documents, or affect any right of a prevailing party to recover  
5 attorneys' fees in excess of twenty-five per cent of the  
6 judgment pursuant to any statute that specifically provides that  
7 a prevailing party may recover all of its reasonable attorneys'  
8 fees. "Planned community association" for the purposes of this  
9 section means a nonprofit homeowners or community association  
10 existing pursuant to covenants running with the land."

11 SECTION 2. This Act does not affect rights and duties that  
12 matured, penalties that were incurred, and proceedings that were  
13 begun before its effective date.

14 SECTION 3. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 4. This Act shall take effect upon its approval.  
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INTRODUCED BY: Sharonne Chun Oakland



# S.B. NO. 2187

**Report Title:**

Attorneys' Fees; Assumpsit Claims

**Description:**

Specifically limits fees recoverable for assumpsit claims to contract-related claims, unless there are contract and non-contract claims and the attorneys' fees incurred to assert or defend such claims cannot be reasonably apportioned. Makes the classification of any action in the nature of assumpsit and on a promissory note or other written contract that provides for the payment of attorneys' fees, as being in tort or in the nature of assumpsit to be binding upon the court, with certain exceptions.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

